

Serial No. 09/853,731
Filed: May 11, 2001

REMARKS

The claims pending for consideration in this application are claims 1-11, 13-17, 19, 23-36, 38-42, 44, 48-55, 59-61, 67-77 and 83-89. Claims 13, 38, 71, 73, 75 and 76 are amended. Claims 23-25 and 83-89 are indicated to be allowable.

Reconsideration of the application, as amended, is respectfully requested.

With the exception of the double patenting rejection over co-pending, co-owned US Serial No. 10/014,363, all prior rejections/objections were withdrawn.

Double Patenting Rejection

Claims 1, 19, 26, 44 and 67-76 are provisionally rejected under obviousness-type double patenting in view of claims 1-16 of co-pending US Serial No. 10/014,363. Applicants note that the Office Action refers to US Serial No. 10/041,363 and believe this to be an error and that US Serial No. 10/014,363 is intended.

For the reasons of record, and in view of the Patent Office's statement on page 5 of the Office Action, it is the Applicant's understanding that this rejection will be dropped once all the other outstanding issues in this case are addressed, and assuming US Serial No. 10/014,363 does not get allowed in the meantime.

Objections

Claims 71, 73 and 75 are objected to as the expression " \pm " is not centered between the two numbers to which it relates. These claims are amended to center the " \pm ".

Claims 2-11, 27-36, 39-42, 48-55, 59-61 and 77 are objected to as depending from a rejected base claim, namely claims 1, 26 and 44, which currently are provisionally rejected under obviousness-type double patenting. This objection is circular. For the reasons discussed above, this objection should automatically become moot once the provisional double patenting rejection is dropped when the other outstanding objections/rejections are resolved.

Newly Issued Section 112 Rejections

Claims 13-17 and 38 are rejected as being indefinite because they depend from cancelled base claims 12 or 37. Claims 13-17 and 38 are amended to depend from currently pending claims 11 and 36, respectively.

Claim 76 is rejected as being indefinite as the amount of poloxamers type 188 given is not associated with a volume. This claim is amended to refer to a volume of per mL consistent with the other concentration units provided in the claim.

Applicants submit that the newly issued objections and Section 112 rejections have been addressed. As such, and inasmuch as copending US Serial No. 10/014,363 has not yet been allowed, applicants request that in accordance with MPEP § 804 I., B

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and C, the pending provisional double patenting rejection of the instant application be withdrawn and the application allowed.

Conclusion

In view of the above amendments and the foregoing remarks, it is respectfully submitted that the instant application is in condition for allowance and prompt allowance of the application is requested.

- Applicants believe that no fee is due with this communication. However, should the Patent Office determine that a fee is owed, or a credit is due to applicant, the Patent Office is hereby authorized to charge any required fees, including any extension of time and/or excess claim fees, or credit any overpayment, to applicant's Deposit Account 08-2525 as appropriate.

Respectfully submitted,



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